

Citation: *R. V. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 170

Appeal No: AD-13-181

BETWEEN:

R. V.

Appellant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: VALERIE HAZLETT PARKER

DATE OF DECISION: July 4, 2014

DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On March 13, 2013, a Review Tribunal determined that a Canada Pension Plan disability pension was not payable. The Applicant filed an application for leave to appeal (the “Application”) with the Appeal Division of the Social Security Tribunal (the “Tribunal”) on May 7, 2013.

ISSUE

[3] The Tribunal must decide whether the appeal has a reasonable chance of success.

THE LAW

[4] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development (DESD) Act*, “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal”.

[5] Subsection 58(1) of the DESD Act states that the only grounds of appeal are the following:

- a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[6] The decision of the Review Tribunal is considered a decision of the General Division.

[7] Subsection 58(2) of the DESD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

SUBMISSIONS

[8] The Applicant submitted in support of the Application that his condition had not changed or improved, and it was a prolonged illness.

[9] The Respondent made no submissions.

ANALYSIS

[10] Although a leave to appeal application is a first, and lower, hurdle to meet than the one that must be met on the hearing of the appeal on the merits, some arguable ground upon which the proposed appeal might succeed is needed in order for leave to be granted: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC).

[11] Furthermore, the Federal Court of Appeal has found that an arguable case at law is akin to determining whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 4, *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[12] In order to be granted leave to appeal, the Applicant must put forward an argument that has a reasonable chance of success that falls within the parameters of section 58 of the DESD Act. The Applicant in this case argued that his condition had not changed. He did not allege that the Review Tribunal had made any errors in fact or in law, or that any principle of natural justice had not been observed. Therefore he has not put forward an argument that has a reasonable chance of success on appeal.

CONCLUSION

[13] The Application is refused.

Valerie Hazlett Parker
Member, Appeal Division